

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|----------------------|---|--------------|
| H. BEATTY CHADWICK | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| R.D. ANDREWS, et al. | : | NO. 97-4680 |

MEMORANDUM and ORDER

Norma L. Shapiro, J.

December 23, 1997

Petitioner H. Beatty Chadwick ("Mr. Chadwick") has filed a motion for release on bail pending determination of the merits of his underlying petition for writ of habeas corpus. Respondents, the Warden of Delaware County Prison, the District Attorney of Delaware County, the Attorney General of Pennsylvania, and intervenor Barbara Jean Crowther Chadwick ("Ms. Chadwick"), object to Mr. Chadwick's release. For the reasons stated below, Mr. Chadwick's motion for bail will be denied.

BACKGROUND

The Chadwicks have a divorce action pending in the Delaware County Court of Common Pleas since November, 1992. During a support conference in the state court in February, 1993, Mr. Chadwick informed the court and Ms. Chadwick he had transferred \$2,502,000 of marital assets, including \$869,106 from an Individual Retirement Account, to satisfy an alleged debt to Maison Blanche, Ltd. ("Maison Blanche"), a Gibraltar company. Ms. Chadwick had no knowledge of any debt owed by Mr. Chadwick to Mason Blanche.

After hiring a private investigator and further discovery, Ms. Chadwick determined Mr. Chadwick had transferred \$869,106 from Gibraltar to an American account in his own name; Mr. Chadwick used those funds to purchase three separate insurance annuity contracts. The state court entered a freeze order on the three insurance contracts on April 29, 1994.

Nevertheless, in May, 1994, Mr. Chadwick redeemed the insurance contracts and deposited the funds in a Panamanian bank. On July 22, 1994, the state court held a hearing at which Mr. Chadwick and his counsel were present. After hearing testimony regarding the disposition of the \$2,502,000 sent to Gibraltar, the court determined Mr. Chadwick's transfer of the money was an attempt to defraud Ms. Chadwick and the court. The judge ordered Mr. Chadwick to return the money to an account under the jurisdiction of the court.

Mr. Chadwick refused to comply with the July, 1994 order; Ms. Chadwick filed a petition for contempt. The state court held contempt hearings on August 29, 1994; October 18, 1994; and October 31, 1994. Mr. Chadwick did not appear at any of the hearings. The state court found Mr. Chadwick in contempt of the July, 1994 order and issued a bench warrant for his arrest.

Upon learning a bench warrant was issued, Mr. Chadwick fled the jurisdiction. After an altercation with law enforcement officers, Mr. Chadwick was arrested and detained on April 5,

1995; he has been incarcerated for civil contempt in Delaware County Prison since that date (approximately thirty-two months).

Mr. Chadwick has filed six petitions for state post-conviction relief; the trial court denied all petitions. Mr. Chadwick has not returned any of the \$2,502,000 to the account under the jurisdiction of the state court. Mr. Chadwick filed a request for bail in the state court. After a hearing, the judge set bail at \$3,000,000 cash; Mr. Chadwick can be released from prison by posting bail or purging his contempt by complying with the July, 1994 order to deposit \$2,502,000 in the court's account.

Several appeals of the trial court's denial of Mr. Chadwick's post-conviction petitions and its denial of his motion to vacate court orders were consolidated on appeal. The Pennsylvania Superior Court affirmed the lower court decisions. Mr. Chadwick's petition for allowance of appeal to the Pennsylvania Supreme Court was denied on April 8, 1997.

Mr. Chadwick's sixth petition for state post-conviction relief was denied by the trial court. Mr. Chadwick appealed that decision to the Superior Court, which affirmed the trial court's decision by opinion dated April 23, 1997. The Superior Court specifically invited the Pennsylvania Supreme Court to review its decision to clarify the point under state law at which a coercive penalty for civil contempt becomes a criminal sanction, but Mr.

Chadwick did not seek review of that Superior Court decision.

Mr. Chadwick filed a previous petition in this court for writ of habeas corpus. By Memorandum and Order dated January 17, 1997, the court, concluding Mr. Chadwick could have sought review of his sixth state post-conviction petition in the Pennsylvania Supreme Court, dismissed Mr. Chadwick's petition for failing to exhaust available state court remedies. The court denied Mr. Chadwick's motion for reconsideration on May 29, 1997.

Mr. Chadwick filed the present petition for writ of habeas corpus in July, 1997. He argues that his continued detention in the Delaware County Prison now serves only a punitive purpose; as such, he is no longer imprisoned for civil contempt and must be afforded the protections and procedures available before criminal sanctions can be imposed. Mr. Chadwick's petition has been referred to United States Magistrate Judge Arnold C. Rapoport ("Judge Rapoport") for a Report and Recommendation on the merits.

Mr. Chadwick filed a motion for release on bail pending determination of the merits of his habeas petition that was denied by Judge Rapoport. Mr. Chadwick now appeals to this court.

DISCUSSION

The authority of a federal court to grant bail pending resolution of the merits of a habeas petition is well established. See In re Shuttlesworth, 369 U.S. 35, 35 (per

curiam); Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir.),
cert. denied, 506 U.S. 955 (1992); Johnston v. Marsh, 227 F.2d
528, 531 (3d Cir. 1955). However, a court may grant bail only in
limited circumstances. "[A] preliminary grant of bail is an
exceptional form of relief in a habeas corpus proceeding." Lucas
v. Hadden, 790 F.2d 365, 367 (3d Cir. 1986). The petitioner must
make a showing of "extraordinary circumstances." Landano, 907
F.2d at 1239; Lucas, 790 F.2d at 367.

Mr. Chadwick argues he is likely to succeed when the court
determines the merits of his habeas petition, so he seeks release
pending that outcome. Potential success on the merits alone is
not adequate justification for grant of bail. "'We doubt that it
is appropriate to grant bail prior to ruling on a state habeas
petition solely on the ground that there is a high likelihood of
success on the merits'" Landano, 907 F.2d at 1241 (quoting
Lucas, 790 F.2d at 367).

Absence of a state remedy for release on bail is not
sufficient justification for release by a federal court. See id.
at 1240. Even delay in deciding the habeas petition on the
merits does not warrant bail. See id. at 1240; Johnson v.
Rosemeyer, No. 91-2865, 1994 WL 702664, at *3 (E.D. Pa. Dec. 14,
1994).

There are two basic situations when release on bail can be
granted pending resolution of a habeas petition: 1) the

petitioner's sentence is so short that, if he is not released pending a decision on the merits, his entire sentence will run before he can obtain relief; and 2) the petitioner is gravely ill. Bail may be granted if the petitioner's sentence is so short that "if bail were denied and the habeas petition were eventually granted, the defendant would already have served the sentence." Landano, 970 F.2d at 1239 (referring to Boyer v. City of Orlando, 402 F.2d 966 (5th Cir. 1968) (sentence of 120 days)). This does not apply here, because Chadwick is not serving a definite sentence; he is imprisoned indefinitely until he complies with the state court's order.

For a petitioner to obtain release on bail for poor health, he must be "gravely ill." Lucas, 790 F.2d at 367. In Johnston, the prisoner suffered from severe diabetes and "was, under conditions of confinement, rapidly progressing toward total blindness." Johnston, 227 F.2d at 529. The prisoner was released to a hospital for immediate treatment, not set free on bail.

Chadwick has lymphoma, but the state court determined after hearings that his condition has been in remission for fifteen years. While lymphoma undoubtedly can be a serious medical condition, the record does not indicate Mr. Chadwick's current medical condition is as "grave" as that petitioner Johnston; nor does Mr. Chadwick claim he needs "immediate treatment" to prevent

a catastrophic injury, such as blindness. Mr. Chadwick desires complete release, rather than medical treatment. The court will not grant bail based on Mr. Chadwick's medical status.

Failure to exhaust state remedies is also a reason for denying bail pending determination of the petition's merits. See Lucas, 790 F.2d at 367. Chadwick did not file a request for review of the Superior Court's decision on his sixth petition for state post-conviction relief; he argues it would have been fruitless to seek review in the Pennsylvania Supreme Court, but there is a potential issue of non-exhaustion. The court will not decide the merits of Mr. Chadwick's habeas petition at this time, but the existence of a possible exhaustion problem provides further support for denying the motion for release on bail.

An appropriate Order follows.

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ORDER

AND NOW, this 23d day of December, 1997, upon consideration of petitioner H. Beatty Chadwick's ("Chadwick") appeal of United States Magistrate Judge Arnold C. Rapoport's ("Judge Rapoport") denial of his motion for release on bail, the responses thereto and after a hearing in which counsel for all parties were heard, it is hereby **ORDERED** that:

1. The decision of Judge Rapoport is **AFFIRMED**.
2. Chadwick's motion for release on bail pending determination of his petition for writ of habeas corpus is **DENIED**.

Norma L. Shapiro, J.